

[79 FR 23681, Apr. 28, 2014]

### Subpart Q [Reserved]

### Subpart R—Exclusion and Exemption of Motor Vehicles and Motor Vehicle Engines

AUTHORITY: Secs. 208(b)(1), 216(2), and 301, Clean Air Act (42 U.S.C. 7522, 7550, and 7061).

SOURCE: 39 FR 32611, Sept. 10, 1974, unless otherwise noted.

#### § 85.1701 General applicability.

(a) The provisions of this subpart regarding exemptions are applicable to new and in-use motor vehicles and motor vehicle engines, except as follows:

(1) Beginning January 1, 2014, the exemption provisions of 40 CFR part 1068, subpart C, apply instead of the provisions of this subpart for heavy-duty motor vehicle engines regulated under 40 CFR part 86, subpart A, except that the nonroad competition exemption of 40 CFR 1068.235 and the nonroad hardship exemption provisions of 40 CFR 1068.245, 1068.250, and 1068.255 do not apply for motor vehicle engines.

(2) Prior to January 1, 2014, the provisions of §§ 85.1706 through 85.1709 apply for heavy-duty motor vehicle engines.

(b) The provisions of this subpart regarding exclusion are applicable after the effective date of these regulations.

(c) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of 40 CFR part 86, subpart S.

(d) In a given model year, manufacturers of motor vehicles and motor vehicle engines may ask us to approve the use of administrative or compliance procedures specified in 40 CFR part 1068 instead of the comparable procedures that apply for vehicles or engines certified under this part or 40 CFR part 86.

[76 FR 57374, Sept. 15, 2011, as amended at 81 FR 73972, Oct. 25, 2016]

#### § 85.1702 Definitions.

(a) As used in this subpart, all terms not defined herein shall have the meaning given them in the Act:

(1) *Export exemption* means an exemption granted by statute under section 203(b)(3) of the Act for the purpose of exporting new motor vehicles or new motor vehicle engines.

(2) *National security exemption* means an exemption which may be granted under section 203(b)(1) of the Act for the purpose of national security.

(3) *Pre-certification vehicle* means an uncertified vehicle which a manufacturer employs in fleets from year to year in the ordinary course of business for product development, production method assessment, and market promotion purposes, but in a manner not involving lease or sale.

(4) *Pre-certification vehicle engine* means an uncertified heavy-duty engine owned by a manufacturer and used in a manner not involving lease or sale in a vehicle employed from year to year in the ordinary course of business for product development, production method assessment and market promotion purposes.

(5) *Testing exemption* means an exemption which may be granted under section 203(b)(1) for the purpose of research investigations, studies, demonstrations or training, but not including national security.

[39 FR 32611, Sept. 10, 1974, as amended at 45 FR 13733, Mar. 3, 1980; 47 FR 30484, July 14, 1982]

#### § 85.1703 Definition of motor vehicle.

(a) For the purpose of determining the applicability of section 216(2), a vehicle which is self-propelled and capable of transporting a person or persons or any material or any permanently or temporarily affixed apparatus shall be deemed a motor vehicle, unless any one or more of the criteria set forth below are met, in which case the vehicle shall be deemed not a motor vehicle:

(1) The vehicle cannot exceed a maximum speed of 25 miles per hour over level, paved surfaces; or

(2) The vehicle lacks features customarily associated with safe and practical street or highway use, such features including, but not being limited to, a reverse gear (except in the case of motorcycles), a differential, or safety features required by state and/or federal law; or

(3) The vehicle exhibits features which render its use on a street or highway unsafe, impractical, or highly unlikely, such features including, but not being limited to, tracked road contact means, an inordinate size, or features ordinarily associated with military combat or tactical vehicles such as armor and/or weaponry.

(b) Note that, in applying the criterion in paragraph (a)(2) of this section, vehicles that are clearly intended for operation on highways are motor vehicles. Absence of a particular safety feature is relevant only when absence of that feature would prevent operation on highways.

[39 FR 32611, Sept. 10, 1974, as amended at 45 FR 13733, Mar. 3, 1980; 73 FR 59178, Oct. 8, 2008; 75 FR 22977, Apr. 30, 2010; 81 FR 73972, Oct. 25, 2016]

**§ 85.1704 Who may request an exemption.**

(a) Any person may request a testing exemption.

(b) Any manufacturer may request a national security exemption under § 85.1708.

(c) For manufacturers, vehicles or engines for export purposes are exempt without application, subject to the provisions of § 85.1709. For eligible manufacturers, as determined by § 85.1706, vehicles or engines for pre-certification purposes are exempt without application, subject to the provisions of § 85.1706(a).

[45 FR 13733, Mar. 3, 1980, as amended at 47 FR 30484, July 14, 1982]

**§ 85.1705 Testing exemption.**

(a) Any person requesting a testing exemption must demonstrate the following:

(1) That the proposed test program has a purpose which constitutes an appropriate basis for an exemption in accordance with section 203(b)(1);

(2) That the proposed test program necessitates the granting of an exemption;

(3) That the proposed test program exhibits reasonableness in scope; and

(4) That the proposed test program exhibits a degree of control consonant with the purpose of the program and the Environmental Protection Agency's (hereafter EPA) monitoring requirements. Paragraphs (b), (c), (d), and (e) of this section describe what constitutes a sufficient demonstration for each of the four above identified elements.

(b) With respect to the purpose of the proposed test program, an appropriate purpose is one which is consistent with one or more of the bases for exemption set forth under section 203(b)(1), namely, research, investigations, studies, demonstrations, or training, but not including national security. A concise statement of purpose is a required item of information.

(c) With respect to the necessity that an exemption be granted, necessity arises from an inability to achieve the stated purpose in a practicable manner without performing or causing to be performed one or more of the prohibited acts under section 203(a). In appropriate circumstances time constraints may be a sufficient basis for necessity, but the cost of certification alone, in the absence of extraordinary circumstances, is not a basis for necessity.

(d) With respect to reasonableness, a test program must exhibit a duration of reasonable length and affect a reasonable number of vehicles or engines. In this regard, required items of information include:

(1) An estimate of the program's duration;

(2) The maximum number of vehicles or engines involved; and

(e) With respect to control, the test program must incorporate procedures consistent with the purpose of the test and be capable of affording EPA monitoring capability. As a minimum, required items of information include:

(1) The technical nature of the test;

(2) The site of the test;

(3) The time or mileage duration of the test;

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(4) The ownership arrangement with regard to the vehicles or engines involved in the test;

(5) The intended final disposition of the vehicles or engines;

(6) The manner in which vehicle identification numbers or the engine serial numbers will be identified, recorded, and made available; and

(7) The means or procedure whereby test results will be recorded.

(f) A manufacturer of new motor vehicles or new motor vehicle engines may request a testing exemption to cover any vehicles and/or engines intended for use in test programs planned or anticipated over the course of a subsequent one-year period. Unless otherwise required by the Director, Manufacturers Operations Division, a manufacturer requesting such an exemption need only furnish the information required by paragraphs (a)(1) and (d)(2) of this section along with a description of the recordkeeping and control procedures that will be employed to assure that the vehicles and/or engines are used for purposes consistent with section 203(b)(1).

[39 FR 32611, Sept. 10, 1974, as amended at 45 FR 13733, Mar. 3, 1980; 47 FR 30484, July 14, 1982]

### § 85.1706 Pre-certification exemption.

(a) Except as provided in paragraph (b) of this section, any pre-certification vehicle or pre-certification vehicle engine, as defined by § 85.1702(a) (3) or (4), is exempt from section 203(a), without application, if the manufacturer complies with the following terms and conditions:

(1) The manufacturer shall create, maintain, and make available at reasonable times for review or copying by appropriate EPA employees records which provide each vehicle identification or engine serial number, indicate the use of the vehicle or engine on exempt status and indicate the final disposition of any vehicle or engine removed from exempt status; and

(2) Unless the requirement is waived or an alternative procedure is approved by the Director, Manufacturers Operations Division, the manufacturer shall permanently affix to each vehicle or engine on exempt status in a readily visible portion of the engine compart-

ment (on a readily visible portion of a heavy-duty engine or in a readily accessible position on a motorcycle) a label which cannot be removed without destruction or defacement and which states in the English language, in block letters and numerals of a color that contrasts with the background of the label, the following information:

(i) The label heading: Emission Control Information;

(ii) Full corporate name and trademark of manufacturer;

(iii) Engine displacement, engine family identification and model year of vehicle or engine; or person or office to be contacted for further information about the vehicle or engine;

(iv) The statement: THIS VEHICLE OR ENGINE IS EXEMPT FROM THE PROHIBITIONS OF SECTIONS 203(a)(1), (3) and (4) OF THE CLEAN AIR ACT, AS AMENDED.

(3) No provision of paragraph (a)(2) of this section shall prevent a manufacturer from including any other information it desires on the label.

(b) Any manufacturer that desires a pre-certification exemption and is in the business of importing, modifying or testing uncertified vehicles for resale under the provisions of 40 CFR 85.1501 through 85.1515, must send the request to the Designated Compliance Officer as specified in 40 CFR 1068.30. The Designated Compliance Officer may require such manufacturers to submit information regarding the general nature of the fleet activities, the number of vehicles involved, and a demonstration that adequate record-keeping procedures for control purposes will be employed.

[47 FR 30484, July 14, 1982, as amended at 81 FR 73972, Oct. 25, 2016]

### § 85.1707 Display exemption.

Where an uncertified vehicle or engine is a display vehicle or engine to be used solely for display purposes, will not be operated on the public streets or highways except for that operation incident and necessary to the display purpose, and will not be sold unless an applicable certificate of conformity has

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been received, no request for exemption of the vehicle or engine is necessary.

[39 FR 32611, Sept. 10, 1974. Redesignated and amended at 47 FR 30484, July 14, 1982]

### **§ 85.1708 National security exemption.**

A manufacturer requesting a national security exemption must state the purpose for which the exemption is required and the request must be endorsed by an agency of the Federal Government charged with responsibility for national defense.

[39 FR 32611, Sept. 10, 1974. Redesignated at 47 FR 30484, July 14, 1982]

### **§ 85.1709 Export exemptions.**

(a) A new motor vehicle or new motor vehicle engine intended solely for export, and so labeled or tagged on the outside of the container and on the vehicle or engine itself, shall be subject to the provisions of section 203(a) of the Act, unless the importing country has new motor vehicle emission standards which differ from the USEPA standards.

(b) For the purpose of paragraph (a) of this section, a country having no standards, whatsoever, is deemed to be a country having emission standards which differ from USEPA standards.

(c) EPA shall periodically publish in the FEDERAL REGISTER a list of foreign countries which have in force emissions standards identical to USEPA standards and have so notified EPA. New motor vehicles or new motor vehicle engines exported to such countries shall comply with USEPA certification regulations.

(d) It is a condition of any exemption for the purpose of export under section 203(b)(3) of the Act, that such exemption shall be void ab initio with respect to a new motor vehicle or new motor vehicle engine intended solely for export where:

(1) Such motor vehicle or motor vehicle engine is sold, or offered for sale, to an ultimate purchaser in the United States for purposes other than export; and

(2) The motor vehicle or motor vehicle engine manufacturer had reason to believe that any such vehicle would be

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sold or offered for sale as described in paragraph (d)(1) of this section.

[39 FR 32611, Sept. 10, 1974. Redesignated at 47 FR 30484, July 14, 1982]

### **§ 85.1710 Granting of exemptions.**

(a) If upon completion of the review of an exemption request, as required by §§ 85.1705 and 85.1708, the granting of an exemption is deemed appropriate, a memorandum of exemption will be prepared and submitted to the person requesting the exemption. The memorandum will set forth the basis for the exemption, its scope, and such terms and conditions as are deemed necessary. Such terms and conditions will generally, include, but are not limited to, agreements by the applicant to conduct the exempt activity in the manner described to EPA, create and maintain adequate records accessible to EPA at reasonable times, employ labels for the exempt engines or vehicles setting forth the nature of the exemption, take appropriate measures to assure that the terms of the exemption are met, and advise EPA of the termination of the activity and the ultimate disposition of the vehicles or engines.

(b) Any exemption granted pursuant to paragraph (a) of this section shall be deemed to cover any subject vehicle or engine only to the extent that the specified terms and conditions are complied with. A breach of any term or condition shall cause the exemption to be void ab initio with respect to any vehicle or engine. Consequently, the causing or the performing of an act prohibited under sections 203(a) (1) or (3) of the Clean Air Act other than in strict conformity with all terms and conditions of this exemption shall render the person to whom the exemption is granted, and any other person to whom the provisions of section 203 are applicable, liable to suit under sections 204 and 205 of the Act.

[39 FR 32611, Sept. 10, 1974, as amended at 45 FR 13733, Mar. 3, 1980. Redesignated and amended at 47 FR 30485, July 14, 1982]

### **§ 85.1711 Submission of exemption requests.**

Requests for exemption or further information concerning exemptions and/

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or the exemption request review procedure should be addressed to the Designated Compliance Officer as specified at 40 CFR 1068.30.

[81 FR 73972, Oct. 25, 2016]

### § 85.1712 Treatment of confidential information.

(a) Any person or manufacturer may assert that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment as provided by 40 CFR part 2, subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this subpart is confidential, a person or manufacturer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of it submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this subpart is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by the Administrator only to the extent and by means of the procedures set forth in part 2, subpart B, of this chapter.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter, in accordance with 40 CFR 2.204(c)(2)(i)(A).

[50 FR 34797, Aug. 27, 1985]

### §§ 85.1713–85.1714 [Reserved]

### § 85.1715 Aircraft meeting the definition of motor vehicle.

This section applies for aircraft meeting the definition of motor vehicle in § 85.1703.

(a) For the purpose of this section, aircraft means any vehicle capable of sustained air travel above treetop heights.

(b) The standards, requirements, and prohibitions of 40 CFR part 86 do not apply for aircraft or aircraft engines. Standards apply separately to certain aircraft engines, as described in 40 CFR part 87.

[75 FR 22977, Apr. 30, 2010]

### § 85.1716 Approval of an emergency vehicle field modification (EVFM).

This section describes how you may implement design changes for an emergency vehicle that has already been placed into service to ensure that the vehicle will perform properly in emergency situations. This applies for any light-duty vehicle, light-duty truck, or heavy-duty vehicle meeting the definition of *emergency vehicle* in 40 CFR 86.004-2 or 86.1803. In this section, “you” refers to the certifying manufacturer and “we” refers to the EPA Administrator and any authorized representatives.

(a) You must notify us in writing of your intent to install or distribute an emergency vehicle field modification (EVFM). In some cases you may install or distribute an EVFM only with our advance approval, as specified in this section.

(b) Include in your notification a full description of the EVFM and any documentation to support your determination that the EVFM is necessary to prevent the vehicle from losing speed, torque, or power due to abnormal conditions of its emission control system, or to prevent such abnormal conditions from occurring during operation related to emergency response. Examples of such abnormal conditions may include excessive exhaust backpressure from an overloaded particulate trap, or running out of diesel exhaust fluid for engines that rely on urea-based selective catalytic reduction. Your determination must be based on an engineering evaluation or testing or both.

(c) You may need our advance approval for your EVFM, as follows:

(1) Where the proposed EVFM is identical to an AECD we approved under

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this part for an engine family currently in production, no approval of the proposed EVFM is necessary.

(2) Where the proposed EVFM is for an engine family currently in production but the applicable demonstration is based on an AECD we approved under this part for an engine family no longer in production, you must describe to us how your proposed EVFM differs from the approved AECD. Unless we say otherwise, your proposed EVFM is deemed approved 30 days after you notify us.

(3) If we have not approved an EVFM comparable to the one you are proposing, you must get our approval before installing or distributing it. In this case, we may request additional information to support your determination under paragraph (b) of this section, as follows:

(i) If we request additional information and you do not provide it within 30 days after we ask, we may deem that you have retracted your request for our approval; however, we may extend this deadline for submitting the additional information.

(ii) We will deny your request if we determine that the EVFM is not necessary to prevent the vehicle from losing speed, torque, or power due abnormal conditions of the emission control system, or to prevent such abnormal conditions from occurring, during operation related to emergency response.

(iii) Unless we say otherwise, your proposed EVFM is deemed approved 30 days after we acknowledge that you have provided us with all the additional information we have specified.

(4) If your proposed EVFM is deemed to be approved under paragraph (c)(2) or (3) of this section and we find later that your EVFM in fact does not meet the requirements of this section, we may require you to no longer install or distribute it.

[77 FR 34145, June 8, 2012]

## Subpart S—Recall Regulations

AUTHORITY: Sec. 301(a), Clean Air Act, 81 Stat. 504, as amended by sec. 15(c), 84 Stat. 1713 (42 U.S.C. 1857g(a)). The regulations implement sec. 207(c) (1)–(2), Clean Air Act, 84 Stat. 1697 (42 U.S.C. 1847f–5a(c)(1)–(2)); sec. 208(a), Clean Air Act, 81 Stat. 501, as renun-

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bered by sec. 8(a), 84 Stat. 1694 (42 U.S.C. 1857f–6(a)).

SOURCE: 39 FR 44375, Dec. 23, 1974, unless otherwise noted.

### § 85.1801 Definitions.

For the purposes of this subpart, except as otherwise provided, words shall be defined as provided for by sections 214 and 302 of the Clean Air Act, 42 U.S.C. 1857, as amended.

(a) *Act* shall mean the Clean Air Act, 42 U.S.C. 1857, as amended.

(b) *Days* shall mean calendar days.

### § 85.1802 Notice to manufacturer of nonconformity; submission of Remedial Plan.

(a) A manufacturer will be notified whenever the Administrator has determined that a substantial number of a class or category of vehicles or engines produced by that manufacturer, although properly maintained and used, do not conform to the regulations prescribed under section 202 of the Act in effect during (and applicable to) the model year of such vehicle. The notification will include a description of each class or category of vehicles or engines encompassed by the determination of nonconformity, will give the factual basis for the determination of nonconformity (except information previously provided the manufacturer by the Agency), and will designate a date, no sooner than 45 days from the date of receipt of such notification, by which the manufacturer shall have submitted a plan to remedy the nonconformity.

(b) Unless a hearing is requested pursuant to § 85.1807, the remedial plan shall be submitted to the Administrator within the time limit specified in the Administrator's notification, provided that the Administrator may grant the manufacturer an extension upon good cause shown.

(c) If a manufacturer requests a public hearing pursuant to § 85.1807, unless as a result of such hearing the Administrator withdraws his determination of nonconformity, the manufacturer shall submit the remedial plan within 30 days of the end of such hearing.

[39 FR 44375, Dec. 23, 1974, as amended at 42 FR 36456, July 15, 1977]